

22 October 2008

WATERFRONT PLACE 1 EAGLE STREET BRISBANE  
PO BOX 7844 WATERFRONT PLACE BRISBANE QLD 4001 AUSTRALIA  
DX 102 BRISBANE www.minterellison.com  
TELEPHONE +61 7 3119 6000 FACSIMILE +61 7 3119 1000

Mr Richard Chadwick  
General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

FILE No.
DOC -
REARS/PRISM.

Dear Mr Chadwick

### Notification with respect to the supply of membership services

Please find **enclosed** a notification of possible third line forcing conduct, lodged on behalf of Australian Society of Dental Anaesthesiology Incorporated (**ASDA**), with respect to the supply of membership services.

Enclosed is:

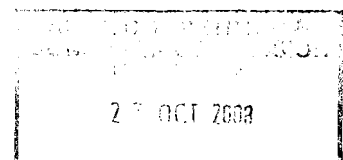
- (a) a Form G: Notification of Exclusive Dealing relating to certain terms for the supply of membership services to registered dentists or dental specialists who wish to become members of the ASDA which raise third line forcing concerns;
- (b) a submission in support of the notification; and
- (c) a cheque in the amount of \$100 payable to the Australian Competition and Consumer Commission.

If you have any questions in relation to this notification or require any further information, please contact Kathryn Finlayson on (07) 3119 6380.

Yours faithfully

**MINTER ELLISON**

Contact: Kathryn Finlayson Direct phone: +61 7 3119 6380 Direct fax: +61 7 3119 1380  
Email: kathryn.finlayson@minterellison.com  
Our reference: KEXF MAB 40-5274356



**MINTER ELLISON GROUP AND ASSOCIATED OFFICES**

SYDNEY MELBOURNE BRISBANE CANBERRA ADELAIDE PERTH GOLD COAST DARWIN  
AUCKLAND WELLINGTON HONG KONG SHANGHAI JAKARTA LONDON

**Form G**

Commonwealth of Australia

*Trade Practices Act 1974 - sub-section 93(1)*

**NOTIFICATION OF EXCLUSIVE DEALING**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

**1. Applicant**

(a) Name of person giving notice:

N93632 Australian Society of Dental Anaesthesiology Incorporated ('ASDA')

(b) Short description of business carried on by that person:

ASDA is an incorporated association of dentists, dental sedationists and those with an interest in dental sedation established to:

- (i) support, protect and advance the interests of its members;
- (ii) encourage the study of dental sedation;
- (iii) establish, promote and maintain high ethical and professional standards among dental sedationists;
- (iv) provide guidance to members regarding their activities, duties and conduct in relation to the practice of dental sedation and the practice of dentistry in the field of dental sedation;
- (v) pursue and advance the recognition and acceptance of the practice of dental sedation as a specialist branch of dentistry; and
- (vi) promote high standards of education in dental schools by teaching and supporting anaesthesiology, acute and chronic pain control and anxiety management at both undergraduate and post graduate level.

These objects are reflected in the ASDA's Constitution.

(c) Address in Australia for service of documents on that person:

Margaret Brown  
Minter Ellison Lawyers  
Waterfront Place  
1 Eagle Street  
BRISBANE QLD 4000

**2. Notified arrangement**

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

ASDA offers membership benefits to those persons described in paragraph 3(a).

- (b) Description of the conduct or proposed conduct:

The ASDA will supply membership services to members who are registered dentists or dental specialists on the condition that those members are also members of an approved professional association for dentists.

**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

- (a) Class or classes of persons to which the conduct relates:

Registered dentists or dental specialists who are or wish to become members of the ASDA.

- (b) Number of those persons:

- (i) At present time:

80

- (ii) Estimated within the next year:

90

- (c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:

Not applicable.

**4. Public benefit claims**

- (a) Arguments in support of notification:

(i) The notified conduct has two main public benefits. First, it avoids duplication of services as between the applicant and an approved professional association for dentists and the costs associated with that duplication. This allows the applicant to focus its more limited resources on issues of specific relevance to dentists interested in dental sedation while relying on the approved professional association to provide services of application to dentists generally. This results in a more efficient and cost effective allocation of resources and increases the benefits of membership and therefore the quality of patient care.

(ii) Second, the notified conduct ensures that all members of the applicant who are registered dentists or dental specialists are exposed to a multi-disciplinary approach to dental practice which encourages a better balance to patient care and clinical and patient management. The applicant believes that it is important that its members have access to information, guidelines

and educational materials for dentists generally in order to assist them to understand how dental sedation complements general dental practice and to assist them to assist patients to make informed choices about their dental treatment. In particular, it is important that its members have access to information regarding quality control, safety and specialist information regarding orthodontic practice.

(b) Facts and evidence relied upon in support of these claims:

(i) See **attached** submission.

## 5. **Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

The market is the market for the provision of membership benefits to registered dentists and dental specialists.

There are no other professional associations for dentists or dental specialists with an interest in dental sedation in Australia.

## 6. **Public detriments**

(a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2(a) above and the prices of goods or services in other affected markets:

The applicant submits that the notified conduct will have little, if any, public detriment. The only financial impact is the requirement that members pay the membership fees involved in joining an approved association of dentists.

(b) Facts and evidence relevant to these detriments:

Membership of ASDA is not a mandatory nor statutory requirement to practising dentistry or dental sedation within Australia.

**7. Further information**

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Margaret Brown  
Minter Ellison Lawyers  
Waterfront Place  
1 Eagle Street  
BRISBANE QLD 4000

Dated 22 October 2008

Signed by/on behalf of the applicant

  
.....  
(Signature)

Margaret Alice Brown  
.....  
(Full Name)

Minter Ellison  
.....  
(Organisation)

Consultant  
.....  
(Position in Organisation)

**DIRECTIONS**

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible

## **SUBMISSION**

On behalf of the Australian Society of Dental Anaesthesiology Incorporated  
in support of a Notification under section 93(1) of the *Trade Practices Act 1974* (Cth)

### **1. Background**

- 1.1 The Australian Society of Dental Anaesthesiology Incorporated (**ASDA**) is an incorporated association of dentists, dental sedationists and those with an interest in dental sedation in Australia.
- 1.2 The objects of the ASDA are to:
  - (a) support, protect and advance the interests of its members;
  - (b) encourage the study of dental sedation;
  - (c) establish, promote and maintain high ethical and professional standards among dental sedationists;
  - (d) provide guidance to members regarding their activities, duties and conduct in relation to the practice of dental sedation and the practice of dentistry in the field of dental sedation;
  - (e) pursue and advance the recognition and acceptance of the practice of dental sedation as a specialist branch of dentistry; and
  - (f) promote high standards of education in dental schools by teaching and supporting anaesthesiology, acute and chronic pain control and anxiety management at both undergraduate and post graduate level.
- 1.3 The ASDA requires members who are registered dentists or dental specialists to be members of the ADA.
- 1.4 Our client is concerned that the restriction set out at 1.3 above could be characterised as a breach of section 47(6) and (7) of the *Trade Practices Act 1974* (Cth) (**TPA**).
- 1.5 Our client wishes to notify the conduct described above under section 93(1) of the TPA.

### **2. Analysis of the conduct**

- 2.1 We submit that the public benefit of the notified conduct outweighs the public detriment of the notified conduct.
- 2.2 As outlined in section 5 of Form G, we consider the relevant market to be the market for the provision of membership benefits to registered dentists and dental specialists.
- 2.3 The main public benefit of the notified conduct is that it avoids duplication of services as between the ASDA and an approved professional association for dentists (such as the Australian Dental Association) and the costs associated with that duplication. This results in more efficient and cost effective allocation of resources.
- 2.4 The applicant provides the following services:

- (i) organisation of an annual national conference relating to current issues in and around the practice of dental sedation. These conferences allow members, and in particular, dental specialists, to exchange clinical knowledge and professional information;
- (ii) participation in the review and evaluation of graduate dental sedation programs and provision of information regarding such programs;
- (iii) representation of members' interests to regulatory and government bodies. For example, the applicant persuaded the Dental Board of Queensland that a proposed requirement that certified dental sedation practices be evaluated every five years should be applied to a random sample of practices rather than to all practices. This resulted in a substantial cost and time saving for sedation practices;
- (iv) provision of teaching expertise in the postgraduate Diploma in Operative Dentistry (Dental Sedation);
- (v) conducts specialist programs and provides guidelines and information regarding key areas of dental sedation practice such as infection control guidelines and emergency management training and updates;
- (vi) publication and dissemination on a quarterly basis of emails which provide members with summaries of current research and clinical case studies within the discipline of dental sedation; and
- (vii) allowing members to participate in public awareness programs specifically relating to dental sedation (e.g. by contributing to and distributing educational material such as information pamphlets to the public).

2.5 The largest professional association for dentists in Australia is the Australian Dental Association. The Australian Dental Association provides the following services to its members:

- (a) representation of organised dentistry in Australia through the Federal Council of the Australian Dental Association and its Federal Executive;
- (b) complaints resolution processes to resolve complaints about members in relation to a member's conduct, performance or standards in the provision of services;
- (c) development of policies for members focussing on key areas of clinical practice and patient management including privacy, delivery of oral care to special groups such as adolescents and indigenous Australians and prevention and management of oral injuries;
- (d) provision of information on general dental practice issues and developments including general infection control in clinical practice, clinical photography and radiography;
- (e) provision of information in relation to the evaluation of dental products including therapeutics, instruments, materials and equipment and dental supplies such as gloves, materials and sterilisation mechanisms;
- (f) advice, information and associated support regarding:



- (i) professional indemnity insurance;
  - (ii) legal issues of general dental practice including professional indemnity, industrial relations, privacy issues and consent documentation;
  - (iii) workplace health and safety issues; and
  - (iv) human resources issues; and
- (g) access to the Australian Dental Journal, newsletters, guidelines, web-site portals and information from dental libraries.
- 2.6 We believe that the notified conduct will have little public detriment. There is no statutory requirement for a dentist or a dental sedationist practising in Australia to be a member of the ASDA or the Australian Dental Association.

### **3. Conclusion**

- 3.1 For the reasons set out above and in Form G, we submit that the ACCC should issue a notice under section 93(3A) of the TPA.
- 3.2 We consider that the public benefits of the notified conduct will outweigh any public detriment it causes.